

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the matter of:)	Complaint No. R4-2008-0043
)	
)	for
Mr. Herzel Rico Michaeli)	Violation of California Water Code § 13304
123 South Westgate Avenue)	and
		Cleanup and Abatement
Los Angeles, CA 90007)	Order No. R4-2004-0165

This Complaint to assess administrative civil liability pursuant to California Water Code (CWC) § 13304 is issued to Mr. Herzel Rico Michaeli based on a finding of violation of cleanup and abatement requirements prescribed in Cleanup and Abatement Order No. R4-2004-0165.

The Chief Deputy Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:

1. Mr. Herzel Rico Michaeli is the former owner and operator of a gasoline service station, located at 5742 Orange Avenue, in Long Beach. In November 1998, the Long Beach City Department of Health and Human Services informed the Regional Board that the site had contaminated soil and groundwater. Three single-walled steel underground storage tanks (USTs) and the six associated dispensers were removed from the property by Bill's Service Station Maintenance on September 16, 1998. The tanks removed included two (2) 10,000-gallon gasoline USTs and one (1) 2,000-gallon diesel UST.
2. Immediately following the tank removal activities, a total of fourteen (14) soil samples were collected by Advanced GeoEnvironmental, Inc. The laboratory results indicated that an unauthorized release of hydrocarbons, mostly petroleum, had occurred beneath the former USTs and dispensers. After the removal activities, contaminated soil was hauled off-site and properly disposed of at a licensed disposal facility. All Environmental, Inc., (AEI), was retained by Mr. Michaeli to perform a soil and groundwater investigation to further define the extent of vertical and horizontal petroleum hydrocarbon contamination.
3. In the Site Characterization Workplan, dated October 20, 1998, AEI informed Long Beach Health Department that it proposed to drill a total of five borings and sample the two groundwater monitoring wells (MW-1 and MW-2) located on site. AEI also proposed to collect three groundwater samples from the borings placed around the former tank area.
4. On October 23, 1998, AEI collected a total of twenty-seven (27) soil samples and four (4) groundwater samples from six (6) borings on-site. All soil and groundwater samples were analyzed for Total Petroleum Hydrocarbon as gasoline (TPH_G), Benzene, Toluene, Ethyl benzene, Xylenes, (BTEX), and Methyl Tertiary Butyl Ether (MTBE).

July 25, 2008

5. In the Subsurface Investigation Report (SIR) produced by AEI, dated November 2, 1998, AEI stated that the analytical results of groundwater and soil sampling from October 23, 1998 detected relatively high concentrations of TPH_G (up to 3,703 milligrams per kilogram [mg/kg]), benzene (up to 12.952 mg/kg), and MTBE (up to 4.8 mg/kg) in soil samples at the site. AEI recommended that additional contaminated soil be excavated and removed.
6. In a letter dated November 3, 1998, the Long Beach Health Department referred this case to the Regional Board for regulatory oversight.
7. In a letter dated October 26, 2000, Regional Board staff directed Mr. Michaeli to implement a quarterly groundwater monitoring program and submit quarterly groundwater monitoring reports to the Regional Board. The quarterly reports were due on April 30, July 31, October 31 and January 31 every year.
8. In the Fourth Quarter 2003 (October-December) Groundwater Monitoring report, dated January 8, 2004, relatively high concentrations of TPH_G (up to 26,200 micrograms per liter [µg/L]), benzene (up to 2,250 µg/L), and MTBE (up to 1,070 µg/L) were detected in the down-gradient monitoring well at the site. The extent of down-gradient groundwater contamination had not been fully defined.
9. In a letter dated January 29, 2004, Regional Board staff directed Mr. Michaeli to submit a groundwater assessment workplan to install an adequate number of on-site/off-site groundwater monitoring wells to further define the full extent of the groundwater contamination plume. Mr. Michaeli was directed to complete the next quarterly groundwater monitoring report (January – March 2004) and submit all site laboratory data over the Internet to the SWRCB Geotracker System by April 15, 2004. In addition, Mr. Michaeli was directed to submit certain technical reports [1-Preliminary Site Conceptual Model (PSCM) Report; 2- Interim Remedial Action (IRA) Report and Workplan; 3- Site Characterization (SC) Report and Workplan] to the Regional Board by April 15, 2004.
10. The PSCM report, dated February 25, 2004, was prepared by The Reynolds Group and submitted to the Regional Board.
11. In a letter dated March 12, 2004, the Regional Board staff reviewed the PSCM and determined that the extent of contamination still had not been fully defined. The letter informed Mr. Michaeli that the Groundwater Assessment Workplan, IRA Report, and Site Conceptual Model Update (SCMU) were due to the Regional Board by July 15, 2004. The letter also reminded Mr. Michaeli that the next quarterly groundwater monitoring report and all electronic laboratory data was due by April 15, 2004.
12. On August 16, 2004, the Executive Officer issued a Notice of Violation (NOV) to Mr. Michaeli. The NOV directed Mr. Michaeli to submit the delinquent Groundwater Assessment Workplan, SCMU, IRA Report, electronic laboratory data, and the First and Second Quarter Groundwater Monitoring reports by August 31, 2004, pursuant to CWC section 13267.
13. On January 5, 2005, the Executive Officer issued a CAO, under section 13304 of the CWC, ordering Mr. Michaeli to adequately assess, monitor, report, and cleanup and abate the effects of gasoline discharged to the soil and groundwater. Specifically, the CAO required Mr. Michaeli to:

- a) submit the Groundwater Assessment Workplan by April 15, 2005;
 - b) submit the Site Conceptual Model Update by April 15, 2005;
 - c) submit the Quarterly Groundwater Monitoring reports by April 15, 2005;
 - d) submit the Interim Remedial Action report by April 15, 2005; and
 - e) submit all laboratory data over the Internet to the SWRCB Geotracker System by April 15, 2005.
14. Mr. Michaeli failed to submit the above reports by April 15, 2005.
15. On October 20, 2005, the Executive Officer issued a NOV to Mr. Michaeli. The NOV alleged that Mr. Michaeli had violated CWC section 13267 and/or 13304 and directed Mr. Michaeli to submit the above-mentioned delinquent technical reports. The letter also reminded Mr. Michaeli that the second and third quarter 2005 SCMUs and groundwater monitoring reports were due by July 15, 2005 and October 15, 2005, respectively.
16. In a letter dated December 20, 2005, the Executive Officer noted a request made by Mr. Michaeli for an extension of 4 months to complete the required site work and submit the delinquent technical reports. Mr. Michaeli's request was denied and all previously mentioned reports were to be submitted to the Regional Board immediately.
17. The Regional Board received the above-mentioned technical reports June 27, 2006, 432 days past the April 15, 2005 deadline specified in the CAO.

ALLEGED VIOLATIONS

18. Mr. Michaeli is in violation of the CAO by failing to submit the reports by the required due date.

Technical Report	Due Date	Date Submitted	Number of Days Late
Groundwater Assessment Workplan	April 15, 2005	June 27, 2006	432
Site Conceptual Model Update	April 15, 2005	June 27, 2006	432
Quarterly Groundwater Monitoring Reports	April 15, 2005	June 27, 2006	432
Interim Remedial Action Plan	April 15, 2005	June 27, 2006	432
TOTAL			1,728

POTENTIAL CIVIL LIABILITY

19. Section 13350 (a) of the CWC states in part that "Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."
20. Section 13350 (e) of the CWC states that "The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both."

21. Mr. Michaeli is alleged to have violated section 13304 of the CWC by not submitting technical reports as required under the CAO for a total of 432 days from April 15, 2005 to June 27, 2006. Under section 13350(e)(1), the maximum civil liability that could be imposed by the Regional Board for violation of the CAO is \$5,000 per day of violation. Because the violations alleged relate to the failure to submit technical reports, the maximum \$1,000 per day of violation penalty structure set forth in CWC section 13268(b) (1) relating to failures to furnish technical or monitoring reports is considered a more appropriate maximum liability in this case. Therefore, using CWC section 13268(b) (1) as a guide, the maximum liability is:

$$1,728 \text{ days} \times \$1,000 \text{ per day} = \$1,728,000$$

POTENTIAL MAXIMUM PENALTY

Penalty Category	Calculation	Total
<i>For failing to comply with Cleanup and Abatement Order No. R4-2004-0165</i>	1,728 days X \$1,000/day	\$1,728,000
POTENTIAL MAXIMUM ACL		\$1,728,000

RECOMMENDED CIVIL LIABILITY

22. Pursuant to section 13327 of the CWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstance, extent, and gravity of the violations; susceptibility of the discharge to cleanup or abatement; the degree of toxicity of the discharge; with respect to the violator, the ability to pay, the effect on its ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability and economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.
23. Nature, circumstances, extent, and gravity of the violations: The Executive Officer issued Mr. Michaeli an NOV on August 16, 2004, a CAO on January 5, 2005, an NOV on October 20, 2005, and another letter on December 20, 2005, all requiring submittal of delinquent technical reports. Mr. Michaeli was provided with more than adequate time to submit the delinquent technical reports. Because the reports were not submitted until June 27, 2006, the Regional Board was unable, for a period of 14 months, to ascertain the seriousness of the contamination in terms of constituents, including emergent chemicals, pervasiveness and threat to human health and the environment.
24. Susceptibility to cleanup or abatement of the discharge: Results of groundwater samples indicated that relatively high concentration of Total Petroleum Hydrocarbon as gasoline, benzene, and MTBE were detected in some of the groundwater monitoring wells at this site. Soil and groundwater contamination at the site is susceptible to cleanup and abatement using standard and existing technology.
25. Degree of toxicity of the discharge: The soil and groundwater contamination at the site is known to contain concentrations of Total Petroleum Hydrocarbon as gasoline, benzene, and MTBE. Benzene

is a known Class A human carcinogen and leukemogen, and has resulted in degradation of water quality by exceeding Maximum Contamination Levels and Basin Plan objectives for groundwater. The USEPA lists MTBE as a potential (or possible) carcinogen.

26. The ability of Mr. Michaeli to pay: Mr. Michaeli owns property located at 418 North Bowling Green Way, Los Angeles, California, 90049. It appears Mr. Michaeli has sufficient equity in that property to pay the proposed liability. In addition, Mr. Michaeli is a partner in K.A.R.E.N. Oil and has a 65% interest in a promissory note from Sunrise Oil in the amount of \$650,000 from the 2005 sale of the property located at 5742 Orange Avenue, in Long Beach. This asset appears to provide Mr. Michaeli additional equity to pay the proposed liability.
27. The effect on Mr. Michaeli's ability to continue in business: Mr. Michaeli sold the business to Mr. Ken Chau in October 2005. Therefore, this factor is not applicable to this case.
28. Any voluntary cleanup efforts undertaken: The Regional Board is unaware of any voluntary cleanup efforts. However, monitoring wells were installed and samples taken from these wells indicate that the groundwater is contaminated.
29. Prior history of violations: There have been no prior violations adjudicated by the Regional Board against Mr. Michaeli.
30. Degree of culpability: Mr. Michaeli knowingly delayed submittal of the technical reports. Some of the technical reports were never completed; these include the Site Conceptual Model Updates and the Quarterly Groundwater Monitoring Reports, because there was no groundwater monitoring data collected from the first Quarter in 2004 through the first Quarter in 2006. The information from past groundwater monitoring events cannot be made up.
31. Economic benefit or savings: Mr. Michaeli experienced a cost savings by failing to conduct groundwater monitoring and provide the technical reports required by the Regional Board. The Regional Board staff estimates the cost for conducting groundwater monitoring and sampling and preparation of the required technical reports is at least \$36,000. Mr. Michaeli realized cost savings of \$36,000 by failing to follow Regional Board requirements and submitting required technical reports.
32. Other matters as justice may require: An additional matter to consider is the time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this Complaint and related documents. With total staff time of approximately 47 hours, using a rate of \$125 per hour, staff costs incurred by the Regional Board are estimated to total \$5,875.
33. After consideration of the factors in §13327 of the California Water Code, the Chief Deputy Executive Officer recommends that administrative civil liability be imposed on Mr. Michaeli by the Regional Board in the amount of \$50,000 which includes the following:

An assessment of \$50,000 for the 1,728 days in which Mr. Michaeli failed to comply with the requirements of Cleanup and Abatement Order No. R4-2004-0165

$$1,728 \text{ days} \times \$29 \text{ per day} = \$50,000$$

RECOMMENDED CIVIL LIABILITY

Penalty Category	Calculation	Total
<i>For failing to comply with Cleanup and Abatement Order No. R4-2004-0165</i>	CWC § 13350 (e)(1): 1,728 days x \$29/day	\$50,000
TOTAL RECOMMENDED PENALTY		\$50,000

WAIVER OF HEARING


34. Mr. Michaeli may waive the right to a hearing. Should Mr. Michaeli choose to waive the right to a hearing, he must sign the waiver form attached to this Complaint and return the executed waiver form, along with a check in the amount of \$50,000 (payable to the State Water Pollution Cleanup and Abatement Account), to the Regional Board (320 West 4th Street, Suite 200, Los Angeles, CA 90013) by the close of business on August 25, 2008.
35. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Mr. Herzel Rico Michaeli is alleged to have violated requirements contained in Cleanup and Abatement Order No. R4-2004-0165 (CAO) issued pursuant to section 13304 of the California Water Code (CWC), for which the Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose administrative civil liability under CWC section 13350.
2. Mr. Michaeli is alleged to have violated cleanup and abatement requirements contained in the CAO by not submitting required technical reports.
3. A hearing shall be conducted on this Complaint by the Regional Board or a Regional Board Hearing Panel (Hearing Panel) within 90 days after service of this Complaint on Mr. Michaeli pursuant to CWC sections 13228.14 and 13323, unless Mr. Michaeli waives the hearing and pays the recommended penalty of \$50,000. Mr. Michaeli will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. A notice containing the date, time, and location of the hearing will be mailed to Mr. Michaeli not less than ten (10) days prior to the hearing date.
4. The Regional Board will consider whether to affirm, reject or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of greater judicial civil liability.
5. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of*

Oakland v. Public Employees' Retirement System (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.).

6. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.


for Paul Rasmussen

Deborah J. Smith
Chief Deputy Executive Officer
Los Angeles Regional Water Quality Control Board

July 25, 2008

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of Mr. Michaeli to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2008-0043 (Complaint) issued by the Regional Board Chief Deputy Executive Officer. Mr. Michaeli understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

Mr. Michaeli elects to pay the civil liability in the following manner:

Mr. Michaeli understands that this Waiver gives up the rights to argue against the allegations made by the Chief Deputy Executive Officer in this Complaint and against imposition of, and the amount of, civil liability imposed. Mr. Michaeli also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind Mr. Michaeli in the making and giving of this Waiver.

Mr. Herzel Rico Michaeli

Date: _____

By: _____
(Signed name) (Printed or typed name)

Position: _____